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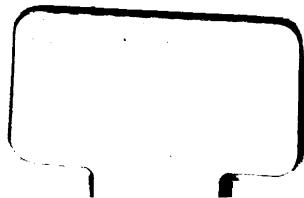
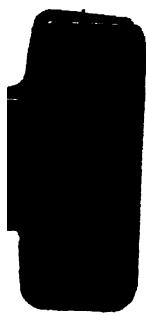
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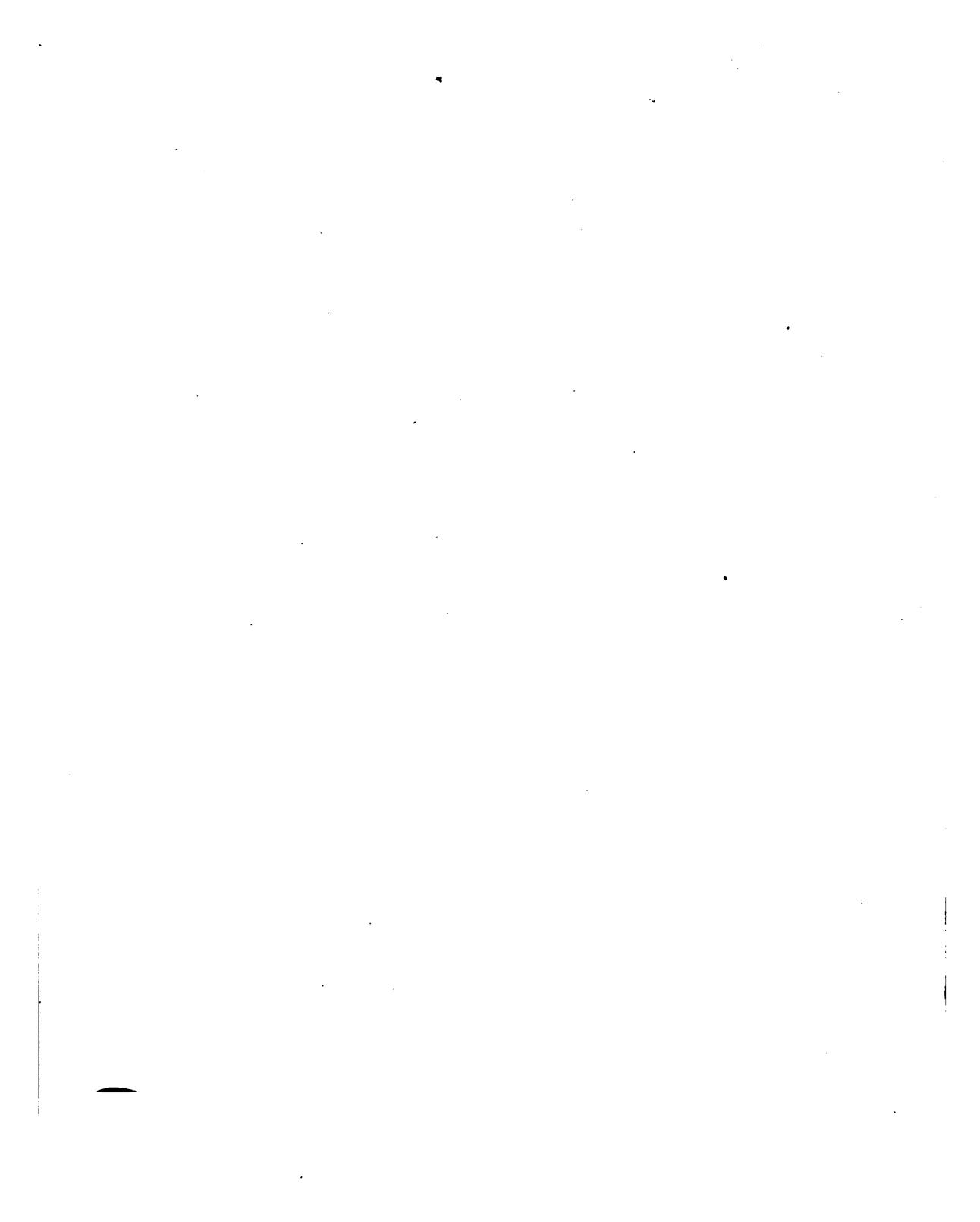
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Australasian Law Gazette &c.

A SYNOPSIS

OF THE

BILLS OF EXCHANGE ACTS

OF ENGLAND AND WALES,

AND THE

COLONIES OF VICTORIA, NEW SOUTH WALES, SOUTH
AUSTRALIA, QUEENSLAND, WESTERN AUSTRALIA,
TASMANIA, AND NEW ZEALAND.



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P R E F A C E.

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In these days when the relations of the Australasian colonies, particularly in financial matters, are more closely interwoven than ever, local variations in the text of so important a piece of legislation as the Bills of Exchange Act, when not forgotten altogether, are apt to confuse. Constant readers of the banking correspondence columns of the *Australasian Insurance and Banking Record* will have noticed how frequently questions arise from the want of complete identity of provisions in the Act as adopted by the several colonies. The variations, the want of identity referred to, render it necessary for a banker sitting say in Melbourne or Sydney, but with connections in other colonies, to keep at hand the Bills of Exchange Act of each colony. This necessity is sufficiently troublesome, but even with the different statutes before him, the banker finds nothing to indicate points of difference, and he is consequently compelled either to devote time which he can ill spare to collating texts, or to refer the matter to his solicitor. But the solicitor has to take the trouble which the banker seeks to escape. It is therefore manifest that to both banker and solicitor, and in fact to everybody having mercantile relations with more than one of the Australasian colonies, a synoptical treatment of all the Bills of Exchange Acts must be of great utility. The intention of this work is to render this important service. In its projection, however, the question arose, which Act should be taken as the principal text upon which to note variations, and it was concluded that the parent Act, that passed by the Imperial Parliament in 1882, might most suitably be selected. This has accordingly been done, and the work now presented to the mercantile, banking, and legal worlds, is a complete synopsis of the Bills of Exchange Acts of England and Wales, and of the seven

Australasian colonies. By reference to its pages the exact law upon the subject as enacted in any colony can be easily ascertained, while the points of difference between the eight Acts will be at once perceived.

The work, it will be seen, is calculated to be eminently useful, not only in the colonies, but also in London, where the need of an exact acquaintance with colonial law on bills of exchange, cheques and promissory notes exists, quite as strongly as in Melbourne, Sydney, or any other colonial centre.

The method adopted to indicate variations between the different Acts is as follows, viz.: the section as given in the English Act being printed in large type, the alterations contained in each of the colonial Acts are set forth in small type. The great majority of these alterations are verbal only, and do not really affect the law. Perhaps the most inconvenient of them is divergence from the numbering of the sections, a fault which colonial Legislatures might profitably avoid when adopting English Acts. The three colonial Acts in which the numbering differs from the English Act are those of Victoria, Queensland, and Western Australia, all of which are one in advance. The variations are marked by the use of brackets []. In order to keep the reader readily instructed, a note stating the method of treatment is repeated at the bottom of every page.

The greatest care has been taken in the collation of the texts, which has been entrusted to the hands of a legal gentleman experienced in such work, and it is confidently believed that perfect accuracy has been achieved. The schedules contained in the various Acts will be found on pages 68 to 76. The Table of Contents on pages 77 to 80 will be found serviceable.

The work is now committed to the favourable consideration of the banker, the merchant, and the solicitor, who are interested in the scope of its contents.

MELBOURNE,

1st October, 1892.

AN ACT TO CODIFY THE LAW RELATING TO BILLS OF EXCHANGE, CHEQUES, AND PROMISSORY NOTES.

[45 & 46 Vict. c. 61.—18TH AUGUST, 1882.]

Victoria.—[An Act to consolidate the Law Relating to Instruments and Securities, 54 Vict. No. 1103—10th July 1890.]

New South Wales.—[51 Vict. No. 2—8th July 1887.]

South Australia.—[47 & 48 Vict. No. 312—10th September 1884.]

Queensland.—[48 Vict. No. 10—30th September 1884.]

Western Australia.—[48 Vict. No. 10—27th August 1884.]

Tasmania.—[48 Vict. No. 14—24th November 1884.]

New Zealand.—[47 Vict. No. 8—20th August 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the [Lords Spiritual and Temporal, and Commons, in this present Parliament assembled] and by the authority of the same, as follows:

For the words in [] substitute—

Victoria.—[Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled]

New South Wales.—[Legislative Council and Legislative Assembly of New South Wales in Parliament assembled]

For the whole paragraph substitute—

South Australia.—Whereas it is desirable to codify the law relating to bills of exchange, cheques, and promissory notes—Be it therefore Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, and by the authority of the same, as follows:

For the words in [] substitute—

Queensland.—[Legislative Council and Legislative Assembly of Queensland in this present Parliament assembled]

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

For the whole paragraph substitute—

Western Australia.—Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:

Tasmania.—Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

New Zealand.—Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

[PART I.—PRELIMINARY.]

Victoria—Omit heading in []

Short title.

1. This Act may be cited as the Bills of Exchange Act, 1882.

Victoria—For section 1 substitute the following:—

1. This Act may be cited as the *Instruments* Act 1890, and shall come into operation on the first day of August One thousand eight hundred and ninety, and is divided into Parts Divisions and Subdivisions as follows:—

Short title, commencement, and division.

Part I.—Bills of Exchange Cheques and Promissory Notes.

Division 1.— Bills of Exchange.	(1) Form and Interpretation ss. 4-22. (2) Capacity and authority of Parties ss. 23-27. (3) The Consideration for a Bill ss. 28-31. (4) Negotiation of Bills ss. 32-39. (5) General Duties of the Holder ss. 40-53. (6) Liabilities of Parties ss. 54-59. (7) Discharge of Bill ss. 60-65. (8) Acceptance and Payment for honour ss. 66-69. (9) Lost Instruments ss. 70 and 71. (10) Bill in a Set s. 72. (11) Conflict of Laws s. 73.	
	Division 2.— Cheques on a Banker.	(1) Generally ss. 74-76. (2) Crossed Cheques ss. 77-83.
	Division 3.—Promissory Notes ss. 84-90.	
	Division 4.—Summary Proceedings ss. 91-98.	
	Division 5.—Supplementary ss. 99-107.	

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

New South Wales.—*For the Bills of Exchange Act, 1882 read the “Bills of Exchange Act, 1887.”*

South Australia.—*For the Bills of Exchange Act, 1882 read the Bills of Exchange Act, 1884.*

Queensland.—*For the Bills of Exchange Act, 1882 read “The Bills of Exchange Act 1884.”*

Western Australia.—*For the Bills of Exchange Act, 1882 read “The Bills of Exchange Act 1884.”*

Tasmania.—*For the Bills of Exchange Act, 1882 read “The Bills of Exchange Act, 1884.”*

New Zealand.—*For the Bills of Exchange Act, 1882 read “The Bills of Exchange Act, 1883.”*

Victoria only.

[2. The Acts mentioned in the First Schedule to this Act to the extent to which the same are thereby expressed to be repealed are hereby repealed. Provided that such repeal shall not affect any instrument or security the subject-matter of this Act made or given or in existence before or at the commencement of this Act, nor the registration of any instrument or security the subject-matter of this Act effected before the commencement of this Act, nor any contract or agreement made lien or pledge given or other act matter or thing done before the commencement of this Act. And all bills of exchange promissory notes bankers' drafts cheques on bankers in existence or effected before the commencement of this Act and all contracts agreements liens pledges or other act matter or thing made entered into or done before the commencement of this Act shall have and be of the same force and effect and continue to have and be of the same force and effect to all intents and purposes whatsoever as the same would respectively have had or continued to have had if this Act had not been passed, and not further or otherwise.]

*Repeal
First Schedule.*

Queensland and Western Australia only.

[2. This Act shall come into operation on the first day of January, One *commencement*. thousand eight hundred and eighty-five.]

Victoria.—Part I.—Bills of Exchange Cheques and Promissory Notes.

IV.3, Q.3, W.A. 2. In this [] Act, unless the context otherwise requires,—
Interpretation of terms.

Victoria.—*Insert in [] the words Part of this*

New Zealand.—*For [2. In this Act, unless the context otherwise requires] read [2. In this Act, if not inconsistent with the context,—]*

“Acceptance” means an acceptance completed by delivery or notification.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

“Action” includes [] counter-claim and set-off.

New South Wales.—Insert in [] suit in equity.

“Australasia” means and includes Australia, Tasmania, New Zealand, and the Fiji Islands.

Tasmania.—For “Action” includes counter-claim and set-off read “Action” includes set-off:

[“Banker” includes a body of persons whether incorporated or not who carry on the business of banking.]

Queensland.—For the words in [] substitute [“Banker” or “Bank” includes a person or body of persons, whether incorporated or not, carrying on the business of banking.]

[“Bankrupt”] includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to [bankruptcy.]

Victoria.—For [“Bankrupt”] read [“Insolvent”] and for [bankruptcy] read [insolvency].

New South Wales.—After [bankruptcy] add [or insolvency].

South Australia.—For paragraph relating to “Bankrupt” substitute the following: “Insolvent” means any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to insolvency, or by virtue of any assignment for the benefit of creditors under the Statute No. 16 of 1860, or other the law for the time being in that behalf.

Queensland.—For [“Bankrupt”] read [“Insolvent”] and for [bankruptcy] read [insolvency].

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, [and “note” means promissory note].

New South Wales.—Omit words in []. Definition of a “note” comes after “Issue.”

Queensland.—“Australasia” means and includes Australia, Tasmania, New Zealand, and the Fiji Islands.
“Colony” means the colony of Queensland.

Western Australia.—“Colony” means the colony of Western Australia.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

South Australia.—“Foreign Bill” means every bill of exchange which is not an inland bill.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

[“Insolvent,” *see* “Bankrupt.”]

“Issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

New South Wales.—“Note” means promissory note.

“Person” includes a body of persons whether incorporated or not.

South Australia.—“Province” means the province of South Australia.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

South Australia.—“Australia” shall include the whole of the Australian Continent, Tasmania, New Zealand, and Fiji, and all islands adjacent thereto which are portions of Her Majesty’s dominions.

PART II.—BILLS OF EXCHANGE.

Victoria.—*For Part II read Division I.*

Form and Interpretation.

Victoria.—*Insert I before Form and Interpretation.*

[V., Q., W.A. 4.] **3.** (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

Bill of Exchange defined.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

- (a.) That it is not dated;
- (b.) That it does not specify the value given, or that any value has been given therefor;
- (c.) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4. (1.) An inland bill is a bill which is or on the face [v., q., w. A. 5.] of it purports to be (a) both drawn and payable within [the British Islands], or (b) drawn within [the British Islands] upon some person resident therein. Any other bill is a foreign bill.

Victoria.—*For words in [] read [Australia Tasmania New Zealand or Fiji Islands.]*

New South Wales.—*For words in [] read [Australasia.]*

South Australia.—*(a) For words in [] read [Australia.]*

(b) For words in [] read [province.]

Queensland.—*For words in [] read [Australasia.]*

Western Australia.—*For words in [] read [Australia, Tasmania, New Zealand, or Fiji Islands.]*

Tasmania.—*For words in [] read [Tasmania.]*

New Zealand.—*For words in [] read [colony.]*

[For the purposes of this Act “British Islands” mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney,

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and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.]

Victoria.
New South Wales.
South Australia.
Queensland.
Western Australia.
Tasmania.
New Zealand.

Omit paragraph in [].

(2.) Unless the contrary appear on the face of the bill, the holder may treat it as an inland bill.

(V., Q., W.A. 6.) 5. (1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. Effect where different parties to bill are the same person.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

(V., Q., W.A. 7.) 6. (1.) The drawee must be named or otherwise indicated in [a] bill with reasonable certainty. Address to drawee.

Queensland.—*Omit [a].*

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

(V., Q., W.A. 8.) 7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. Certainty required as to payee.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable. [V., Q., W.A. 9.]

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. (1.) The sum payable by a bill is a sum certain [V., Q., W.A. 10.] within the meaning of this [] Act, although it is required to be paid—

Victoria.—Insert in [] the words Part of this.

- (a.) With interest.
- (b.) By stated instalments.
- (c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.
- (d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

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(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

[IV., Q., W.A. 11.] 10. (1.) A bill is payable on demand—

Bill payable on demand.

(a.) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

[IV., Q., W.A. 12.] 11. A bill is payable at a determinable future time within the meaning of this [] Act which is expressed to be payable—

Bill payable at future time.

Victoria.—Insert in [] the words Part of this.

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

[IV., Q., W.A. 13.] 12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is

Omission of date in bill payable after date.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be. [V., Q., W.A. 14.]

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand the day [V., Q., W.A. 15.] on which it falls due is determined as follows:

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace : [Provided that—

(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day ;

(b) When the last day of grace is a Bank Holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act 1871 and

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Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.]

For part in [] substitute—

Victoria.—[Provided that when the last day of grace is a Sunday or a bank holiday under the *Banks and Currency Act* 1890 and Acts amending or extending it or a day appointed by the Governor in Council as a day of solemn fast or thanksgiving, the bill is due and payable on the succeeding business day.]

New South Wales.—[Provided that—when the last day of grace falls on Sunday, or on a bank holiday under the “Bank Holidays Act, 1875,” and Acts amending or extending it, or on a day appointed by proclamation by the Governor-in-Council as a day of public fast or thanksgiving, the bill is due and payable on the succeeding business day.]

South Australia.—[Provided that when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a public or bank holiday, or a day appointed by proclamation as a public fast or thanksgiving day, the bill is due and payable on the succeeding business day:]

Queensland.—[Provided that when the last day of grace is a Sunday, or a bank holiday under “The Bank Holidays Act of 1877,” or any Act amending or in substitution for it, the bill is due and payable on the succeeding business day.]

Western Australia.—[Provided that—(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a bank holiday under “The Bank Holidays Act, 1884,” the bill is due and payable on the succeeding business day.]

Tasmania.—[Provided that when the last day of grace is *Sunday* or a bank holiday under “The Bank Holidays Act, 1884,” or Acts amending it, or a day appointed by the Governor in Council as a day of solemn fast or thanksgiving, the bill is due and payable on the succeeding business day; but in the case of bills drawn before the commencement of this Act, when the last day of grace is *Sunday*, the bill is due and payable on the preceding business day:]

New Zealand.—[(a) When the last day of grace falls on Sunday, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day. (b) When the last day of grace is a bank holiday under “The Banks and Bankers Act, 1880,” and “The Banks and Bankers Act Amendment Act, 1882,” or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.]

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- (2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.
- (4.) The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert ^{IV., Q., W.A. 1} therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert ^{IV., Q., W.A. 1} therein an express stipulation—

- (1.) Negativ ing or limiting his own liability to the holder;
- (2.) Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17. (1.) The acceptance of a bill is the signification by ^{IV., Q., W.A. 1} the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely :

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- (a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

v., Q., W.A. 19.]

18. A bill may be accepted—

Time for acceptance.

- (1.) Before it has been signed by the drawer, or while otherwise incomplete :
- (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:
- (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

v., Q., W.A. 20.]

19. (1.) An acceptance is either (a) general or (b) qualified.

General and qualified acceptances

- (2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :
- (c) local, that is to say, an acceptance to pay only at a particular specified place :

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An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

- (d) qualified as to time :
- (e) the acceptance of some one or more of the drawees, but not of all.

Incheate
instruments.

20. (1.) [Where a simple signature on blank stamped ^{IV, Q, W.A. 21} paper () is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; * and, † in like manner,] when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

New South Wales.—*At the end of sub-section (1) add : [When the drawer of a bill signs it and dies before it has been accepted, the drawee may still accept it; and when the acceptor of a bill dies before the drawer has signed it, the drawer may still complete it.]*

South Australia.—(1) *Omit part in [].*

Queensland.—(1) *Insert in () after blank stamped paper, [stamped with an impressed stamp].*

**Queensland.*—*Insert (2) When a simple signature, on unstamped paper, or paper stamped with an adhesive stamp only, is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount not exceeding the amount (if any) written thereon as the maximum, using the signature for that of the drawer, or the acceptor, or an indorser.*

+Q.—Sub-section 3.

(2.*) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

**Q.—Sub-section 4.*

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Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

[V., Q., W.A. 22.] **21.** (1.) Every contract on a bill, whether it be the ^{Delivery.} drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

- (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be :
- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as [] drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Tasmania.—Insert [a] in [].

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*Capacity and Authority of Parties.**Victoria.—Insert (2) before heading.***Capacity of parties.**

22. (1.) Capacity to incur liability as a party to a bill [V.Q., W.A., 22.] is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor [V.Q., W.A. 24.] of a bill who has not signed it as such: Provided that

- (1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name :
- (2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

24. Subject to the provisions of this [] Act, where a [V.Q., W.A. 25.] signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

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Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Victoria.—Insert in [] the words Part of this.

[V., Q., W.A. 26.] **25.** A signature by procuration operates as notice ^{Procuration signatures.} that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

[V., Q., W.A. 27.] **26.** (1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Person signing
as agent or in
representative
capacity.

The Consideration for a Bill.

Victoria.—Insert (3) before heading.

[V., Q., W.A. 28.] **27.** (1.) Valuable consideration for a bill may be con- <sup>Value and holder
for value.</sup> stituted by—

- (a) Any consideration sufficient to support a simple contract ;
- (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

28. (1.) An accommodation party to a bill is a ^[V. Q. W.A. 29.] person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value ; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

29. (1.) A holder in due course is a holder who has ^[V. Q. W.A. 30.] taken a bill, complete and regular on the face of it, under the following conditions ; namely,

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact :

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this [] Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means,

or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Victoria.—Insert in [] the words Part of this.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

[V., Q., W.A. 31.] **30.** (1.) Every party whose signature appears on a bill is ^{Presumption of value and good faith.} primâ facie deemed to have become a party thereto for value.

(2.) Every holder of a bill is primâ facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

Victoria.—Insert [4] before heading.

[V., Q., W.A. 32.] **31.** (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer

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gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotia- [V. Q. W.A. 33.] tion must comply with the following conditions, namely:—

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

- (5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.
- (6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

[V., Q., W.A. 34.] **33.** Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

[V., Q., W.A. 35.] **34.** (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

Indorsement in
blank and
special indorse-
ment.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this [] Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

Victoria.—Insert in [] the words Part of this.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

[V., Q., W.A. 36.] **35.** (1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

Restrictive
indorsement.

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(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of
overdue or dis-
honoured bill.

36. (1.) Where a bill is negotiable in its origin it ^[V., Q., W.A. 37.] continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

[V., Q., W.A. 38.] **37.** Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this [] Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Negotiation of
bill to party
already liable
thereon.

Victoria.—Insert in [] the words Part of this.

[V., Q., W.A. 39.] **38.** The rights and powers of the holder of a bill are as follows:

Rights of the
holder.

- (1.) He may sue on the bill in his own name :
- (2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :
- (3.) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill : and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder.

Victoria.—Insert [5] before heading.

[V., Q., W.A. 40.] **39.** (1.) Where a bill is payable after sight, presentation for acceptance is necessary in order to fix the maturity of the instrument.

When present-
ment for ac-
ceptance is
necessary.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

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(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight. 40. (1.) Subject to the provisions of this [] Act, when [V., Q., W.A. 41.] a bill payable after sight is negotiated the holder must either present it for acceptance or negotiate it within a reasonable time.

Victoria.—Insert in [] the words Part of this.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance and excuses for non-presentment. 41. (1.) A bill is duly presented for acceptance which [V., Q., W.A. 42.] is presented in accordance with the following rules :

(a) The presentment must be made by or on Tas. 1. behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before [the] bill is overdue :

Victoria.—For [the] read [a].

Tasmania.—At end of sub-sec. (a) insert Provided that if the drawee has an office, presentment may be made by leaving the bill at such office for acceptance.

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[Tas. 2.] (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only :

[Tas. 3.] (c) Where the drawee is dead presentment may be made to his personal representative :

[Tas. 4.] (d) Where the drawee is [bankrupt,] presentment may be made to him or to his trustee :

Victoria.—
South Australia.—
Queensland.— } For [bankrupt] read [insolvent].

[Tas. 5.] (e.) Where authorised by agreement or usage a presentment through the post-office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

[Tas. 1.] (a) Where the drawee is dead, [] or is a fictitious person or a person not having capacity to contract by bill :

Victoria.— Insert in [] the words or insolvent.

New South Wales.— Insert in [] the words or bankrupt.

South Australia.—
Queensland.—
Western Australia.— } Insert in [] the words or insolvent.

Tasmania.—
New Zealand.— } Insert in [] the words or bankrupt.

[Tas. 2.] (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

[Tas. 3.] (c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

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Non-acceptance.

42. (1) When a bill is duly presented for acceptance and [v., q., w.a. 43.] is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. (1.) A bill is dishonoured by non-acceptance— [v., q., w.a. 44.]

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this [] Act is refused or cannot be obtained: or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this [] Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Victoria.—Insert in [] the words Part of this.

Duties as to qualified acceptances.

44. (1.) The holder of a bill may refuse to take a [v., q., w.a. 45.] qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a

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reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

[IV., Q., W.A. 46.] **45.** Subject to the provisions of this [] Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. Rules as to presentment for payment.

A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2.) Where the bill is payable on demand, then, subject to the provisions of this [] Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

Victoria.—Insert in [] the words Part of this.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
- (4.) A bill is presented at the proper place:—
 - (a) Where a place of payment is specified in the bill and the bill is there presented.

[Tas. i.]

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- (b) Where no place of payment is specified but ^[Tas. II.] the address of the drawee or acceptor is given in the bill, and the bill is there presented.
- (c) Where no place of payment is specified and ^[Tas. III.] no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
- (d) In any other case if presented to the drawee ^[Tas. IV.] or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1.) Delay in making presentment for payment is ^[V., Q., W.A. 47.] excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

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(2.) Presentment for payment is dispensed with—

(a) Where, after the exercise of reasonable diligence, presentment, as required by this [] Act, cannot be effected.

Victoria.—Insert in [] the words Part of this.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(b) Where the drawee is a fictitious person.

(c) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(e) By waiver of presentment, express* or implied.

* *Tasmania.*—Expressed.

Dishonour by
non-payment.

47. (1.) A bill is dishonoured by non-payment (a) [V.Q.W.A. 48] when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is [] excused and the bill is overdue and unpaid.

New South Wales.—Insert in [] the words dispensed with or.

(2.) Subject to the provisions of this [] Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Victoria.—Insert in [] the words Part of this.

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[V., Q., W.A. 49.] **48.** Subject to the provisions of this [] Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

Notice of dishonour and effect of non-notice.

Victoria.—Insert in [the words Part of this.

- (1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.
- (2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

[V., Q., W.A. 50.] **49.** Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules :—

Rules as to notice of dishonour.

- (1.) The notice must be given by or on behalf of the holder, or by [or] on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

South Australia.—For [or] read [and].

- (2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
- (3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

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- (4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is [bankrupt] notice may be given either to the party himself or to the trustee [].

Victoria.—For [bankrupt] read [bankrupt or insolvent.]

Insert in [] at the end of sub-section the words or assignee.

South Australia.—

Queensland.—

Western Australia.—

For [bankrupt] read [insolvent.]

(11.) Where there are [two or more drawers] or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

New Zealand.—For words in [] read [more than two drawers.]

(12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(a) Where the person giving and the person to ^[Tas. I.] receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(b) Where the person giving and the person to ^[Tas. II.] receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such

notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

[IV. Q. W.A. 51] 50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

Excuses for non-notice and delay.

(2.) Notice of dishonour is dispensed with—

(a) When, after the exercise of reasonable diligence, notice as required by this [] Act cannot be given to or does not reach the drawer or indorser sought to be charged :

Victoria.—Insert in [] the words Part of this.

(b) By waiver [express*] or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

** Victoria.—Expressed.*

(c) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill,

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*(5) where the drawer has countermanded payment:

* *Western Australia*.—*Insert [or]*.

(d) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having () capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted [or] made for his accommodation.

Tasmania.—*Insert in () a.*

New Zealand.—*For [or] read [and].*

Noting or protest of bill. 51. (1.) Where an inland bill has been dishonoured it [V.Q., W.A., 52.] may, if the [holder] think fit, be noted for non-acceptance or non-payment as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

New Zealand.—*For [holder] read [owner].*

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof [] in case of dishonour is unnecessary.

New Zealand.—*Insert as in [].*

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this [] Act, when a bill is noted or protested, it must be noted on the day of

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[its] dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Victoria.—Insert in [] the words Part of this.

New Zealand.—Omit [its].

(5.) Where the acceptor of a bill [becomes bankrupt or insolvent] or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Victoria.—For words in [] read [becomes insolvent].

South Australia.—For words in [] read [is insolvent].

Queensland.—
Western Australia.—} For words in [] read [becomes insolvent].

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(a) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day.

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a) The person at whose request the bill is protested;

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(b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder
as regards
drawee or
acceptor.

52. (1.) When a bill is accepted generally present- [V., Q., W A. 53.]
ment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

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*Liabilities of Parties.**Victoria.—Insert (6) before heading.*

[V., Q., W.A. 54.] **53.** (1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this [] Act is not liable on the instrument.

*Victoria.—Insert in [] the words Part of this.***[This sub-section shall not extend to Scotland.**

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.]

Victoria.
New South Wales.
South Australia.
Queensland.
Western Australia.
Tasmania.
New Zealand.

} *Omit portion in [].*

[V., Q., W.A. 55.] **54.** The acceptor of a bill, by accepting it—

Liability of acceptor.

- (1.) Engages that he will pay it according to the tenor of his acceptance;
- (2.) Is precluded from denying to a holder in due course:
 - (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
 - (b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

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(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of
drawer or
indorser.

55. (1.) The drawer of a bill by drawing it—

[V., Q., W.A. 56.]

(a) Engages that on due [presentment] it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

New Zealand.—*For [presentment] read [presentation].*

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

New South Wales.—*At end of sub-section (a) add: [Provided that where two or more persons indorse as co-sureties, nothing in this sub-section shall disentitle any one or more of them to contribution from the other or others, but the rights and liabilities *inter se* of such indorsers shall be subject to the contract in pursuance of which they became indorsers;]*

(b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

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(c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a) The amount of the bill :

(b) Interest thereon [] from the time of presentation for payment if the bill is payable on demand, and from the maturity of the bill in any other case :

South Australia.—Insert in [] the words at the rate of ten pounds per centum per annum.

(c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from

any party liable to him, the amount of the [re-exchange with] interest thereon* until the time of payment.

Victoria. } For words in [] read [bill with re-exchange
Tasmania. } and.]

* *New Zealand.* — For thereon read thereupon.

(3.) Where by this [] Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Victoria. — Insert in [] the words Part of this.

New South Wales. — At end of sub-section 3 add :

[Nothing in this section shall deprive any person of the right to recover any unliquidated damages to which he may be by law entitled.]

Transferor by
 delivery and
 transferee.

58. (1.) Where the holder of a bill payable to bearer [v., q., w.a. 59.] negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

Victoria. — Insert (7) before heading.

Payment in due
 course.

59. (1.) A bill is discharged by payment in due course [v., q., w.a. 60.] by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in

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good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged ; but

- (a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.
- (b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

[V., Q., W.A. 61.] 60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

New South Wales.—At end of Section 60 add :

[and such indorsement shall be deemed to give as valid an authority to the banker to pay the bill as though it were genuine, and made with due authority.]

[V., Q., W.A. 62.] 61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

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Express waiver.

62. (1.) When the holder of a bill at or after its [v., q., w.a. 63.] maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity ; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1.) Where a bill is intentionally cancelled by the [v., q., w.a. 64.] holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative ; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64. (1.) Where a bill or acceptance is materially [v., q., w.a. 65.] altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of

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the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

Queensland.—*Add* : [Provided that nothing in this section shall affect the provisions of “*The Stamp Duties Act of 1866*,” and Acts amending or in substitution for it.]

Western Australia.—*Add* : [Provided that nothing in this section shall affect the provisions of “*The Stamp Act 1882*,” and Acts amending it.]

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

Victoria.—*Insert (8) before heading.*

[V., Q., W.A. &c.] 65. (1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may with the consent of the holder, intervene and accept the bill ^{Acceptance for honour supra protest.} protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour ^{supra} protest in order to be valid must—

(a) be written on the bill, and indicate that it is an acceptance for honour :

(b) be signed by the acceptor for honour :

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66. (1.) The acceptor for honour of a bill by accepting ^(V., Q., W.A. 67.) it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour.

67. (1.) Where a dishonoured bill has been accepted ^(V., Q., W.A. 68.) for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

IV. Q., W.A. 69.]

68. (1.) Where a bill has been protested for non-payment, any person may intervene and pay it ^{Payment for honour supra protest.} protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment supra protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

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*Lost Instruments.**Victoria.—Insert (9) before heading.**Holder's right to duplicate of lost bill.*

69. Where a bill has been lost before it is overdue, ^[V., Q., W.A. 70.] the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

New South Wales.—At the end of section add:

[on a summary application by order of a Judge of the Supreme Court, upon such terms as to security, and as to costs to be paid by either party, as to such Judge shall seem fit; provided that no such costs shall be ordered to be paid by the drawer unless his refusal to give such duplicate bill was vexatious or unreasonable; and such order shall be subject to a right of appeal to the Supreme Court.

Provided that where the sum payable by the bill is not more than two hundred pounds such order as aforesaid may be made upon the like terms as to security and cost by a Judge of a District Court to which the person so applying if he were a plaintiff suing the drawer on such bill would be entitled to cause the defendant, or one of the defendants, to be summoned; and such order shall be subject to the same right of appeal as that to which an order or decision made in a cause by a Judge of the District Court is, or shall hereafter be subject.]

Action on lost bill.

70. In any action or proceeding upon a bill, the ^[V., Q., W.A. 71.] [court or a judge] may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

*Victoria.—For words in [] read [Supreme Court or a Judge thereof.]**New South Wales.—For words in [] read [Supreme Court or any Judge of the Court in which such action or proceeding is brought.]**Tasmania.—For words in [] read [Supreme Court or a Judge thereof.]*

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

*Bill in a Set.**Victoria.—Insert (10) before heading.*

[V., Q., W.A. 72.] **71.** (1.) Where a bill is drawn in a set, each part of the Rules as to sets. set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted [parts] get into the hands of different holders in due course, he is liable on every (such) part as if it were a separate bill.

*Queensland.—For [parts] read [part].**New Zealand.—Omit (such).*

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

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*Conflict of Laws.**Victoria.—Insert (11) before heading.**Rules where laws conflict.*

72. Where a bill drawn in one country [] is negotiated, [V. Q. W.A. 73.] accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

*New South Wales.— } Insert in [] the words or colony.
South Australia.— }*

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

(a) Where a bill is issued out of [the United Kingdom] it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :

Victoria.—For words in [] read [Victoria].

New South Wales.—,,,, [this Colony].

South Australia.—,,,, [the province].

Queensland.—,,,, [the colony].

Western Australia.—,,,, [the colony].

Tasmania.—,,,, [Tasmania].

New Zealand.—,,,, [the colony].

(b) Where a bill, issued out of [the United Kingdom,] conforms, as regards requisites in form, to the law of [the United Kingdom,] it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons

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who negotiate, hold, or become parties to it in [the United Kingdom].

Victoria.—For words in [] read [Victoria].

New South Wales.—,, „ [this Colony].

South Australia.—,, „ [the province].

Queensland.—,, „ [the Colony] [this Colony] [Queensland] respectively.

Western Australia.—For words in [] read [the colony].

Tasmania.—,, „ [Tasmania].

New Zealand.—,, „ [the colony].

(2.) Subject to the provisions of this [] Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made.

Victoria.—Insert in [] the words Part of this.

Provided that where an inland bill is indorsed [in a foreign country] the indorsement shall as

Queensland.—For words in [] read [out of the colony].

regards the payer be interpreted according to the law of [the United Kingdom.]

Victoria.—For words in [] read [Victoria].

New South Wales.—,, „ [this Colony].

South Australia.—,, „ [the province].

Queensland.—,, „ [Queensland].

Western Australia.—,, „ [the colony].

Tasmania.—,, „ [Tasmania].

New Zealand.—,, „ [the colony].

(3.) The duties of the holder with respect to presentation for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(4.) Where a bill is drawn out of but payable in [the United Kingdom,] and the sum payable *Queensland*.—*For words in [] read [Queensland].*

is not expressed in the currency of [the United Kingdom,] the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

Victoria.—*For words in [] read [Victoria].*

New South Wales.—,, „ [this Colony].

South Australia.—,, „ [the province].

Western Australia.—,, „ [the colony].

Tasmania.—,, „ [Tasmania].

New Zealand.—,, „ [the colony].

(5.) Where a bill is drawn in one country [] and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

New South Wales.—*Insert in [] the words or colony.*

PART III.

Victoria.—*For Part III read Division 2.*

Cheques on a Banker.

Victoria.—(I) Generally.

Cheque defined. 73. A cheque is a bill of exchange drawn on a banker (v., q., w.a. 74.) payable on demand.

New South Wales.—*At end of paragraph add: [to or to the order of a specified person, or to bearer].*

Except as otherwise provided in this [Part,] the provisions of this [] Act applicable to a bill of exchange payable on demand apply to a cheque.

Victoria.—*For [Part] read [Division], and insert in [] the words Part of this.*

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

[V., Q., W.A. 75.]

74. Subject to the provisions of this [] Act—

Victoria.—Insert in [] the words Part of this.Presentment
of cheque for
payment.

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time [of such presentment] as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

Victoria.— } For words in [] read [at which the present-
Tasmania.— } ment ought to have been made].

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and [] the facts of the particular case.

Tasmania.—Insert [to] in [].

(3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

[V., Q., W.A. 76.]

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

Revocation
of banker's
authority.

(1.) Countermand of payment:

(2.) Notice of the customer's death.

*Crossed Cheques.**Victoria.*—Insert [2] before heading.

[V., Q., W.A. 77.]

76. (1.) Where a cheque bears across its face an addition of—

General and
special crossings
defined.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(a) [The words "and company" or any abbreviation thereof] between two parallel transverse lines, either with or without the words "not negotiable;" or

New South Wales.—*For words in [] read [The words "and company," or the word "bank," or any abbreviation thereof respectively].*

Queensland.—*For words in [] read [The word "bank" or the words "and company" or any abbreviation thereof respectively].*

Tasmania.—*For words in [] read [The word "bank"].*

New Zealand.—*For words in [] read [The words "and company" or "bank," or any abbreviation thereof].*

(b) Two parallel transverse lines simply, either with or without the words "not negotiable;" that addition constitutes a crossing, and the cheque is crossed generally.

[(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.]

Queensland.—*For (2) in [] substitute the following:—*

(2.) Where a cheque bears across its face an addition of—
 (a) The name of a bank, either with or without the words "not negotiable;" or
 (b) The word "credit," or any abbreviation thereof, followed by the name of some individual or firm, either with or without the words "not negotiable;"

that addition constitutes a crossing, and the cheque is crossed specially, and to that bank, or to that individual or firm, as the case may be.

And add:—

(3.) But where a cheque crossed specially to an individual or firm also bears across its face, either before or after the name of the individual or firm, the name of a bank, the cheque is, so far as regards the duties and liabilities of the bank on which it is drawn, a cheque crossed specially to the bank whose name it so bears across its face.

Crossing by
drawer or after
issue.

77. (1.) A cheque may be crossed generally or [V, Q, W.A. 78.] specially by the drawer.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Queensland.—*Add the following sub-sec. :—*

(5.) When a cheque is crossed specially to an individual or firm, that individual or firm may again cross it specially to a bank.

[Q., 6.] (5.) Where a cheque is crossed specially, [the banker to whom] it is crossed may again cross it specially to another banker for collection.

Queensland.—*For words in [] substitute [to a bank, the bank to which].*

[Q., 7.] (6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a [banker for collection, he may cross it specially to himself.]

Queensland.—*For words in [] substitute [bank for collection, such bank may cross it specially to itself.]*

[V., Q., W.A. 79.] **78.** A crossing authorised by this [] Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this [] Act, to add to or alter the crossing.

Victoria.—*Insert in [] the words Part of this.*

[V., Q., W.A. 80.] **79.** (1.) Where a cheque is crossed specially to more than one [banker] except when crossed to an agent for collection being a [banker], the [banker] on [whom] it is drawn shall refuse payment thereof.

Queensland.—*For words in [] read [bank] [bank] [bank] [which] respectively.*

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker,

N.B.—The text, in large, type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Queensland.—For sub-sec. (2) substitute the following:—

[(2.) Where the bank on which a cheque is drawn—

- (a) If the cheque is crossed specially to more than one bank (except when crossed to an agent for collection, being a bank), pays the cheque; or
- (b) If the cheque is crossed generally, or is crossed specially to an individual or firm, and is not also crossed specially to a bank, pays it otherwise than to a bank; or
- (c) If the cheque is crossed specially to a bank, pays it otherwise than to the bank to which it is crossed, or its agent for collection, being a bank;

such bank is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.]

And add:—

[(3) When a bank receiving payment of a cheque crossed specially to an individual or firm pays the amount thereof otherwise than to the credit of such individual or firm, such bank is liable to such individual or firm for any loss he or they may sustain owing to the amount having been so paid.]

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this [] Act,

Victoria.—Insert in [] the words Part of this.
the [banker]

Queensland.—For [banker] read [bank.]
paying [] the cheque in good faith and without negligence

Queensland.—Insert in [] the words or receiving payment of
gence shall not be responsible or incur any liability, nor
shall the payment be questioned by reason of the cheque
having been crossed, or of the crossing having been
obliterated or having been added to or altered otherwise
than as authorised by this [] Act, and of payment having

Victoria.—Insert in [] the words Part of this.
been made otherwise than to a [banker] or to the [banker]

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

to whom the cheque is or was crossed, or to his agent for collection being a [banker]

Queensland.—For [banker] read [bank]

[] as the case may be.

Queensland.—Insert in [] the words or of the amount of the cheque having been paid otherwise than to the credit of the individual or firm to whom it was crossed,

[V., Q., W.A. 81.] **80.** Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence [pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker] paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Queensland.—For passage in [] substitute as follows:—

- [*(a)*] If it is crossed generally, or is crossed specially to an individual or firm, and is not also crossed specially to a bank, pays it to a bank; and,
- [*(b)*] If it is crossed specially to a bank, pays it to the bank to which it is crossed, or its agent for collection, being a bank; the bank]

[V., Q., W.A. 82.] **81.** Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

[V., Q., W.A. 83.] **82.** Where a [banker] in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to [himself,] and the customer has no title or a defective title thereto, the [banker] shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Queensland.—For words in [] read [bank] [itself] [bank] respectively.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

PART IV.—PROMISSORY NOTES.

Victoria.—*For Part IV.* read Division 3.

Promissory note defined. **83.** (1.) A promissory note is an unconditional promise [v., q., w.a. 84.] in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within [the British Islands] is an inland note. Any other note is a foreign note.

Victoria.—*For words in [] read [Australia, Tasmania, New Zealand, or the Fiji Islands].*

New South Wales.—*For words in [] read [Australasia].*

South Australia.— , , [Australia].

Queensland.— , , [Australasia].

Western Australia.— , , [Australia, Tasmania, New Zealand, or the Fiji Islands].

Tasmania.—*For words in [] read [Tasmania].*

New Zealand.— , , [the colony].

Delivery necessary.

84. A promissory note is inchoate and incomplete [v., q., w.a. 85.] until delivery thereof to the payee or bearer.

Joint and several notes.

85. (1.) A promissory note may be made by two or [v., q., w.a. 86.] more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons, it is deemed to be their joint and several note.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

[IV., Q., W.A. 87.] **86.** (1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

Note payable
on demand.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

[IV., Q., W.A. 88.] **87.** (1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

Presentment
of note for
payment.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

[IV., Q., W.A. 89.] **88.** The maker of a promissory note by making it—

Liability of
maker.

[Tas. i.] (1.) Engages that he will pay it according to its tenor;

[Tas. ii.] (2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Application of
Part II. to notes.

89. (1.) Subject to the provisions in [] this part and, [V., Q., W.A. 90.]

Victoria.—Insert in [] the words this Division of.

except as by this section provided, the provisions of this [] Act relating to bills of

Victoria.—Insert in [] the words Part of this.

exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

- (a) Presentment for acceptance;
- (b) Acceptance;
- (c) Acceptance *suprà* protest;
- (d) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

Victoria only.

Division 4.—Summary Proceedings.

Interpretation.

91. In the interpretation of this Division of this Part of this Act and the provisions thereof, the term "bill" shall mean and include bill of exchange and promissory note.

Form of action
upon bills due
and costs.

92. Any action upon a bill commenced within six months after the same shall have become due may be by writ of summons in the form contained in the Second Schedule to this Act and indorsed as therein mentioned. And it shall be lawful for the plaintiff on filing an affidavit of personal service of such writ or an order for leave to proceed as provided by any law or rule of practice now or hereafter to be in force and a copy of the writ of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in the Third Schedule to this Act (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the writ together with the interest at the rate specified (if any) to the date of the judgment, and the fixed sum hereinafter mentioned for costs (exclusive of mileage) that is to say—in town causes four guineas, and in country or agency causes five

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pounds (unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way); and the plaintiff may upon such judgment issue execution forthwith.

93. A judge of the Supreme Court shall upon application where the defendant resides within fifty miles of the General Post Office within eight days ^{see cause may allow appearance to write and action to be defended.} and where the defendant resides beyond that distance within sixteen days from such service give leave to appear to such writ and to defend the action, on the defendant paying into court the sum indorsed on the writ or upon affidavits satisfactory to the judge which disclose a defence or such facts as would make it incumbent on the holder to prove consideration or such other facts as the judge may deem sufficient to support the application; and on such terms as to security or otherwise as to the judge may seem fit.

94. After judgment the court or a judge may under special circumstances set aside the judgment and if necessary stay or set aside execution and ^{Judge may allow action to be defended after judgment, if he see fit.} may give leave to appear to the writ and to defend the action if it shall appear to be reasonable to the court or judge so to do, and on such terms as to the court or judge may seem just.

95. In any proceedings under this Division of this Part of this Act, it shall be competent to the court or a judge to order the bill sought to be deposited with an officer of the court; and further to order that all proceedings shall be stayed until the plaintiff shall give security for the costs thereof.

96. The holder of every dishonoured bill shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise by reason of such dishonour, as he has under this Act for the recovery of the amount of such bill.

97. The holder of any bill may if he think fit issue one writ of summons according to this Division of this Part of this Act against all or any number of the parties to such bill; and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively; and all subsequent proceedings against such respective parties shall be in like manner (so far as may be) as if separate writs of summons had been issued.

98. The practice and mode of procedure for the time being applicable to practices in and regulating actions at law shall (so far as the same are not inconsistent herewith) extend and apply to all proceedings had or taken under this Division of this Part of this Act.

PART V.—SUPPLEMENTARY.

Victoria.—For Part V. read Division 5.

[V. 99, Q. W.A.
91.]

90. A thing is deemed to be done in good faith, within ^{good faith.} the meaning of this [] Act, where it is in fact done honestly, whether it is done negligently or not.

Victoria.—Insert in [] the words Part of this.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Signature.

91. (1.) Where, by this [] Act, any instrument or ^[V. 100, Q. W.A.] _[92.]

Victoria.—Insert in [] the words Part of this.

writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it [is] sufficient if his signature is written thereon by some other person by or under his authority.

Queensland.—For [is] read [shall be].

(2.) In the case of a corporation, where, by this [] Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Victoria.—Insert in [] the words Part of this.

Computation of time.

92. Where, by this [] Act, the time limited for doing ^[V. 101, Q. W.A.] _[93.]

any act or thing is less than three days, in reckoning time, non-business days are excluded.

Victoria.—Insert in [] the words Part of this.

“Non-business days” for the purposes of this Act mean—

(a) Sunday, [Good Friday, Christmas Day:] [Tas. I.]

New South Wales. } *New Zealand.* } Omit words in []

(b) A bank holiday under the [“Bank Holidays [Tas. II.] Act, 1871,” or Acts amending it:]

Victoria.—For words in [] read [Banks and Currency Act 1890 or Acts amending it:]

New South Wales.—For words in [] read [“Bank Holidays Act, 1875,” or Acts amending or extending it:]

South Australia.—For sub-section (b) substitute the following:—

(b) A bank or public holiday.

Queensland.—For sub-section (b) substitute the following:—

(b) A bank holiday under “The Bank Holidays Act of 1877,” or Acts amending or in substitution for it.

Western Australia.—} For the Bank Holidays Act, 1871, read Tasmania.—} “The Bank Holidays Act, 1884.”

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

New Zealand.—For sub-sec. (b) substitute the following:—

(b) Good Friday, Christmas Day, and every other bank holiday under "The Banks and Bankers Act, 1880," and "The Banks and Bankers Act Amendment Act, 1882."

[Tas. III.]

(c) A day appointed by [Royal proclamation] as a public fast or thanksgiving day.

Victoria.— } For words in [] read [proclamation by the
New South Wales.— } Governor in Council].

South Australia.—For words in [] read [Proclamation].

Queensland.— } Omit sub-sec. (c).
Western Australia.— }

Tasmania.—For words in [] read [Proclamation by the Governor in Council].

New Zealand.—Omit sub-sec. (c).

Any other day is a business day.

[V. 102, Q. W.A.
94.]

93. For the purposes of this [] Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Victoria.—Insert in [] the words Part of this.

[V. 103, Q. W.A.
95.]

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in [Schedule I.] to this Act may first Schedule. be used with necessary modifications, and if used shall be sufficient.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Victoria.—For words in [] read [the Fourth Schedule].

New South Wales.—For words in [] read [the First Schedule].

South Australia.—

Queensland.—

Western Australia.—

Tasmania.—

New Zealand.—

„ „ [the Schedule].

„ „ [the Schedule I.].

„ „ [the First Schedule].

Dividend warrants may be crossed. 95. The provisions of this [] Act as to crossed [v. 104, q. w.a. 96.] cheques shall apply to a warrant for payment of dividend.

Victoria.—Insert in [] the words Part of this.

South Australia.—

New Zealand.—

New Zealand only.

Bill of exchange drawn at sight to be deemed the same as bill of exchange on demand.

95. Every bill of exchange or promissory note drawn and purporting to be payable at sight or on presentation, shall bear the same stamp, and shall for all purposes whatsoever be deemed to be a bill of exchange or promissory note payable on demand without any "days of grace," any law or custom to the contrary notwithstanding.

Special provision in case of aboriginal natives.

96. No bill or note made or given after the passing of this Act shall attach any liability to any aboriginal Native unless it shall, if not written in Maori, have a Maori translation indorsed thereon; and shall also show upon its face that such bill or note was duly interpreted to such Native at the time of the making or acceptance thereof, and that such Native understood the liability for payment imposed thereby: Provided that this section shall not apply to cheques.

Repeal.

96. [The enactments mentioned in the second schedule [q. w.a. 98, N.Z. 97.] to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.]

New South Wales.—For paragraph in [] read [The Acts mentioned in the Second Schedule to this Act are, so far as they may be in force in the Colony, hereby repealed, as from the commencement of this Act.]

Queensland.—For paragraph in [] read [“The Bills of Exchange Act of 1867” and “The Bills of Exchange Act of 1879” shall be, and the same are hereby repealed.]

Western Australia.—For paragraph in [] read—

[“The Bills of Exchange Act, 1879,” and all other Acts and parts of Acts in force in this Colony contrary to or inconsistent with the provisions of this Act are hereby repealed.]

Tasmania.—For paragraph in [] read—

[The enactments mentioned in the Schedule (2), to the extent therein mentioned, are hereby repealed as from the commencement of this Act, to the extent in that Schedule mentioned.]

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Victoria.—Omit section 96. See however section 2 of Instruments Act 1890 (*Victoria*).

South Australia.—Omit sec. 96, and substitute the following:—

96. The fourth and fifth sections of the Mercantile Law Amendment Act, 1861, and the whole of the Mercantile Law Further Amendment Act, 1878, and of Act No. 19 of 1870-71, intituled an Act to amend the law relating to the endorsement of cheques, drafts, or orders, are hereby repealed; but such repeal shall not affect anything done or suffered, or any right, title, or interest acquired before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Queensland only—

97. (1) A negotiable bill, other than a cheque, and a negotiable note, other than a postal note, shall not be drawn or made for any sum less than twenty shillings.

(2) An instrument which contravenes this rule shall be void, and any person who issues or negotiates it shall be liable, on summary conviction before two justices in petty sessions, to a penalty not exceeding twenty pounds, and not less than twenty shillings.

(3) Provided that no complaint under this section shall be entertained if made after the expiration of thirty days from the commission of the offence.

Western Australia only—

97. (1) A negotiable bill, other than a cheque, and a negotiable note, shall not be drawn or made for any less than twenty shillings.

(2) An instrument which contravenes this rule shall be void, and any person who issues or negotiates it shall be liable, on summary conviction before two justices in petty sessions, to a penalty not exceeding twenty pounds, and not less than five pounds.

(3) Provided that no complaint under this section shall be entertained after the expiration of twenty days from the commission of the offence.

Tasmania only—

97. It is hereby declared that the Acts of the Imperial Parliament mentioned in the Schedule (3) have not at any time *Certain Imperial acts not in force in this Colony* extended to this Colony or been of any force within the same.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Savings. 97. (1.) The rules in [bankruptcy] relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this [] Act contained.

New South Wales.—97. (1.) This Act shall not extend to any bill of exchange, promissory-note, cheque, warrant, or other document, drawn, accepted, or made, before the commencement of this Act; and every right, title, interest, or liability, in respect of such document shall remain as if this Act had not been passed.

N.B.—This sub-section is found only in the New South Wales Act, sub-section (1) of the English Act being sub-section (2) of the New South Wales Act.

Victoria.—For [bankruptcy] read [insolvency].
Insert in [] the words Part of this.

New South Wales.—For [bankruptcy] read [bankruptcy and insolvency].

South Australia.—} For [bankruptcy] read [insolvency].
Queensland.—}

New Zealand.—Omit sub-sec. (1).

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this [] Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

Victoria.—Insert in [] the words Part of this.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

Victoria.—For above read (3) Nothing in this Part of this Act shall affect—

(a) The provisions of [the Stamp Act, 1870, or Acts amending it] or any law or enactment for the time being in force relating to the revenue:

Victoria.—For words in [] read [Parts II. and III. of the Stamp Act 1890].

New South Wales.—For sub-sec. (a) substitute

(a) The provisions of the “Stamp Duties Act of 1880,” the “Stamp Duties Act Amendment Act of 1886,” or any Act amending them or either of them, or any law or enactment for the time being in force relating to the revenue.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Queensland.—For words in [] read: [“*The Stamp Duties Act of 1866*,” or Acts amending or in substitution for it.]

Western Australia.—For the Stamp Act 1870 read “The Stamp Act 1882.”

Tasmania.—For the Stamp Act 1870 read “The Stamp Duties Act 1882.”

New Zealand.—For words in [] read [“*The Stamp Act 1882*.”]

(b) The provisions of [the Companies Act, 1862, or Acts amending it,] or any Act relating to joint stock banks or companies:

Victoria.—For words in [] read [Part I. of the *Companies Act 1890*.]

New South Wales.—For [“*Companies Act 1862*”] read [“*Companies Act 1874*.”]

Queensland.—For [“*Companies Act 1862*”] read [“*Companies Act 1863*.”]

Western Australia.—For the Companies Act 1862 read “The Joint-stock Companies Ordinance 1858.”

Tasmania.—For the Companies Act 1862 read the Companies Act 1869.

New Zealand.—For sub-sec. (b) substitute the following:—

(b) The provisions of “*The Companies Act 1882*.”

(c) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

Victoria.

Queensland.

Western Australia.

Tasmania.

New Zealand.

} Omit this sub-section.

[IV., T., W.A. (c).]

(d) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Queensland.

New Zealand.

} Omit this sub-section.

South Australia.—Omit sub-sec. (3) (a), (b), (c), (d), and substitute:

(3) Nothing in this Act or in any repeal effected thereby shall affect the provisions of the Companies Act 1864, or Acts amending it, or any Act relating to joint-stock banks or companies.

98. Nothing in this Act or in any repeal effected ^{saving of summary diligence in Scotland.} thereby shall extend or restrict, or in any way alter or

N.B.—The text, in large, type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

affect the law and practice in Scotland in regard to summary diligence.

Victoria.
New South Wales.
South Australia.
Queensland.
Western Australia.
Tasmania.
New Zealand.

} *Omit this section.*

Construction
with other
Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act. [N.S.W. 88, Q.
W.A. 100.]

Victoria.
South Australia.

} *Omit this section.*

Parole evidence
allowed in
certain judicial
proceedings in
Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a stay of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

Victoria.
New South Wales.
South Australia.
Queensland.
Western Australia.
Tasmania.
New Zealand.

} *Omit this section.*

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

Victoria and Tasmania only.

[T. 100.] 106. Any person who shall commit any of the following acts shall be deemed to have committed an offence and shall be liable to a penalty not exceeding Five pounds to be recovered in a summary way, that is to say, every person—

*Penalty for
passing bank-
notes with names
of traders or
private persons*

[T. i.] (a) Who after the issue thereof defaces any bank-note by writing printing stamping or marking thereon his name or the name of any other person or any matter relating to the trade business occupation or affairs of any person;

[T. ii.] (b) Who being party or privy to any bank-note being defaced as aforesaid pays away parts with puts in circulation demands payment of or deposits or offers to deposit in any bank any bank-note so defaced as aforesaid.

Provided always that it shall not be deemed to be an offence within the meaning of this provision where any person indorses any bank-note for the purpose of identification or for any other lawful purpose.

[T. 101.] 107. For the purpose of the foregoing section the expression “bank-note” shall include any promissory note issued by a bank which entitles or is intended to entitle the bearer or holder thereof without indorsement or without any further or other indorsement than may be thereon at the time of the issuing thereof to the payment of money not exceeding any sum for which such bank or banker may lawfully issue any such note and in whatever form and by whomsoever such note is drawn or made.

*Definition of
bank-note.*

S C H E D U L E S .

F I R S T S C H E D U L E .

Section 94. Form of protest which may be used when the services of a notary cannot be obtained.

Victoria.—Fourth Schedule, Section 108. Know all men that I, *A. B.* (householder), [of in the county of , in the United Kingdom], at the request of *C. D.*, there being no *Victoria*.—*For words in [] read [of in the county of in Victoria.]*

N.S.W.—First Schedule, Section 94. *New South Wales*.—*For words in [] read [of in the colony of New South Wales.]*

S.A.—Schedule, Section 94. *South Australia*.—*For words in [] read [of in the colony of South Australia.]*

Q.—The Schedule. *Queensland*.—*For words in [] read [of in the colony of Queensland.]*

W.A.—The Schedule. *Western Australia*.—*For words in [] read [of in the colony of Western Australia.]*

Tas.—Schedule (1). *Tasmania*.—*For words in [] read [of in Tasmania.]*

New Zealand.—*For words in [] read [of in the colony of New Zealand.]*

notary public available, did on the day of 188 [at] demand *Western Australia*.—*Read in [] at aforesaid or in the said colony.*

payment (or acceptance) of the bill of exchange [] *Western Australia*.—*Insert in [] [hereunto annexed or].*

hereunder written, from *E. F.*, to which demand he made answer [state answer, if any]; wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

New South Wales.—*Insert [Dated this day of at].*

(Signed) *A. B.*

G. H. } *J. K.* } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

N.B.—The text, in large type, is that of the original (English) Act. Variations therefrom appear in small type. The existence of variations is indicated by the use of brackets []. Different numberings of sections are stated in the margin.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

SESSION AND CHAPTER.	TITLE OF ACT AND EXTENT OF REPEAL.
9 Will. 3. c. 17	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3. c. 30	An Act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3. c. 42	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3. c. 88	An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a Limited sum in England.
1 & 2 Geo. 4. c. 78	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4. c. 15	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4. c. 24	An Act to repeal certain Acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland. in part; that is to say, Sections 2, 4, 7, 8, 9, 10, 11.
2 & 3 Will. 4. c. 98	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4. c. 58	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors <i>suprà</i> protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.

ENACTMENTS REPEALED—*continued.*

SESSION AND CHAPTER.	TITLE OF ACT AND EXTENT OF REPEAL.
8 & 9 Vict. c. 37 in part	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section 24.
19 & 20 Vict. c. 97 in part	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections 6 and 7.
23 & 24 Vict. c. 111 in part	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section 19.
34 & 35 Vict. c. 74	An Act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13	The Bills of Exchange Act, 1878.
ENACTMENTS REPEALED AS TO SCOTLAND.	
19 & 20 Vict. c. 60 in part	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections 10, 11, 12, 13, 14, 15, & 16.

VICTORIA.

SECTION 2.

FIRST SCHEDULE.

DATE OF ACT.	TITLE OF ACT.	EXTENT OF REPEAL.
27 Vict. No. 204	“ <i>The Instruments and Securities Statute 1864</i> ”	So much as is not already repealed.
29 Vict. No. 280	“ <i>Liens on Crops Acts of 1865</i> ”	The whole.
29 Vict. No. 283	“ <i>An Act to amend and explain ‘The Instruments and Securities Statute 1864’</i> ”	The whole.
31 Vict. No. 313	“ <i>An Act to amend ‘The Instruments and Securities Statute 1864’</i> ”	The whole.
31 Vict. No. 324	“ <i>An Act to amend ‘The Mining Companies Limited Liability Act 1864’</i> ”	So much as is not already repealed.
40 Vict. No. 557	“ <i>An Act to amend the Law relating to Bills of Sale</i> ”	The whole.
40 Vict. No. 561	“ <i>An Act to amend the Law relating to the right of Stoppage in Transitu and for other purposes</i> ”	The whole.
42 Vict. No. 618	“ <i>The Lien on Crops Act 1878</i> ”	The whole.
47 Vict. No. 772	“ <i>The Bills of Exchange Act 1883</i> ”	Some, except section 98, as is not already repealed.
49 Vict. No. 863	“ <i>The Bills of Lading Act 1885</i> ”	The whole.
52 Vict. No. 972	“ <i>An Act to amend ‘The Instruments and Securities Statute 1864’</i> ”	The whole.

VICTORIA.

V. Section 92.

SECOND SCHEDULE.

No

VICTORIA, by the Grace of God, &c.

To C,D, of &c.,

We warn you that unless within eight [or sixteen where the defendant resides beyond fifty miles of the General Post Office] days after the service of this writ on you inclusive of the day of such service you obtain leave from one of the judges of our Supreme Court at Melbourne to appear and do within that time appear in our said court in an action at the suit of A.B. the said A.B. may proceed to judgment and execution.

Witness &c.

MEMORANDUM TO BE SUBSCRIBED ON THE WRIT.

N.B.—This writ is to be served within six calendar months from the date hereof or if renewed from the date of such renewal including the day of such date and not afterwards.

ENDORSEMENT TO BE MADE ON THE WRIT BEFORE SERVICE THEREOF

This writ was issued by &c. [as in ordinary cases].

The plaintiff claims [or] pounds principal and interest [or] pounds balance of principal and interest] due to him as the payee [endorsee or bearer] of a bill of exchange [promissory note or order for the payment of money] of which the following is a copy:—

[Here copy bill and all endorsements upon it.]

And if the amount thereof be paid to the plaintiff or his solicitor within four days from the service hereof further proceedings will be stayed.

NOTICE

Take notice that if the defendant do not obtain leave from one of the judges of the said court within days after having been served with this writ inclusive of the day of such service to appear thereto and do not within such time cause an appearance to be entered for him in the said court the plaintiff will be at liberty at any time after the expiration of such time to sign final judgment for any sum not exceeding the sum above claimed and the sum of pounds for costs and issue execution for the same.

Leave to appear may be obtained on application at the Judges' Chambers Law Courts in Lonsdale-street Melbourne supported by affidavit showing that there is a defence to the action on the merits or that it is reasonable that the defendant should be allowed to appear in the action.

Endorsement to be made on the writ after service thereof.

This writ was served by [as in ordinary cases].

V. Section 92.

THIRD SCHEDULE.

In the Supreme Court.

(To wit) A. B. in his own person [or by his solicitor] sued out a writ against C. D. endorsed as follows:—

[Here copy endorsement of plaintiff's claim.]

and the said C. D. has not appeared: therefore on the

NEW SOUTH WALES.

SECOND SCHEDULE.

REPEAL OF ACTS.

SESSION AND CHAPTER.	TITLE OF ACT.
9 Will. III c. 17	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne c. 8 (Printed in Ruff-head's Edition as 3 & 4 Anne, c. 90)	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange and for the better payment of Inland Bills of Exchange.
17 Geo. III c. 30	An Act for further restraining the Negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. III c. 42	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. III c. 88	An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum in England.
1 & 2 Geo. IV c. 78 7 Geo. IV No. 3	An Act to regulate acceptances of Bills of Exchange. An Act to repeal an Act intituled " <i>An Act to make Promissory Notes and Bills of Exchange payable in Spanish dollars available as if such Notes and Bills had been drawn payable in sterling money of the realm and to promote the circulation of sterling money of Great Britain in New South Wales.</i> "
7 & 8 Geo. IV c. 15	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
20 Vict. No. 7	An Act to amend the laws relating to Drafts on Bankers.

N.B. South Australia } In the Acts of these colonies there is no
Queensland }
Western Australia } Schedule of Acts repealed.

TASMANIA.

(2.)

ACTS TO BE REPEALED.

DATE AND NO. OF ACT.	TITLE OF ACT.	EXTENT OF REPEAL.
7 Geo. IV. No. 3	An Act to promote the circulation of Sterling Money of <i>Great Britain</i> , and to reduce to Sterling Denomination all Securities, Contracts, and Agreements for the Payment of Money, and also to regulate the making and issuing of Promissory Notes and Bills of Exchange within the Island of <i>Van Diemen's Land</i> and its Dependencies.	The whole Act so far as unrepealed.
6 Vict. No. 7	An Act to repeal the Laws now in force in this Island by which <i>Spanish Dollars</i> and the proportional parts thereof, and <i>South American</i> and <i>Mexican Dollars</i> are made a Legal Tender therein.	The whole Act.
22 Vict. No. 3	“ <i>The Mercantile Law Amendment Act, 1858</i> ”	Section 4.
38 Vict. No. 9	“ <i>The Bankers Law Amendment Act, 1874</i> ”	The whole Act so far as unrepealed.
42 Vict. No. 10	“ <i>The Bankers Law Amendment Act, 1878</i> ”	Sections 1, 2, and 9 (being so much of the Act as is not repealed by “ <i>The Bank Holidays Act, 1884</i> .”)

TASMANIA.

(3.)

IMPERIAL ACTS NOT APPLICABLE TO TASMANIA.

SESSION AND CHAPTER.	TITLE OF ACT.
9 Will. 3, c. 17	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3, c. 30	An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of <i>Great Britain</i> called <i>England</i> .
39 & 40 Geo. 3, c. 42	An Act for the better observance of <i>Good Friday</i> in certain cases therein mentioned.
48 Geo. 3, c. 88	An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum in <i>England</i> .
1 & 2 Geo. 4, c. 78	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4, c. 15	An Act for declaring the Law in relation to Bills of Exchange and Promissory Notes becoming payable on <i>Good Friday</i> or <i>Christmas Day</i> .
9 Geo. 4, c. 24	An Act to repeal certain Acts, and to consolidate and amend the Laws relating to Bills of Exchange and Promissory Notes in <i>Ireland</i> .

NEW ZEALAND.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

SESSION AND CHAPTER.	TITLE OF ACT AND EXTENT OF REPEAL.
	IMPERIAL.
9 Will. III., c. 17	An Act for the Better Payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8	An Act for giving like Remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the Better Payment of Inland Bills of Exchange.
39 & 40 Geo. III., c. 42	An Act for the Better Observance of Good Friday in certain Cases therein mentioned.
1 & 2 Geo. IV., c. 78	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. IV., c. 15	An Act for declaring the Law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
2 & 3 Will. IV., c. 98	An Act for regulating the Protesting for Non-Payment of Bills of Exchange drawn payable at a Place not being the Place of the Residence of the Drawee or Drawees of the same.
6 & 7 Will. IV., c. 58	An Act for declaring the Law as to the Day on which it is requisite to present for payment to Acceptor, or Acceptors <i>suprà</i> Protest for Honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
	NEW ZEALAND.
1880, No. 12	“The Mercantile Law Act, 1880.” <i>In part</i> , that is to say, Sections 2 and 3.
1880, No. 22	“The Banks and Bankers Act, 1880.” <i>In part</i> , that is to say, Section 21, and Sections 23 to 26, both inclusive.
1882, No. 68	“The Banks and Bankers Act Amendment Act, 1882.” <i>In part</i> , that is to say, Sections 3 to 14, both inclusive.

TABLE OF CONTENTS.

In the following table of Contents sections in the English Act are given in the first column, and the corresponding sections in the Colonial Acts in the second column.

Where the Colonial Acts contain new sections, *i.e.*, sections not found in the English Act, the references to new sections are printed in Italics.

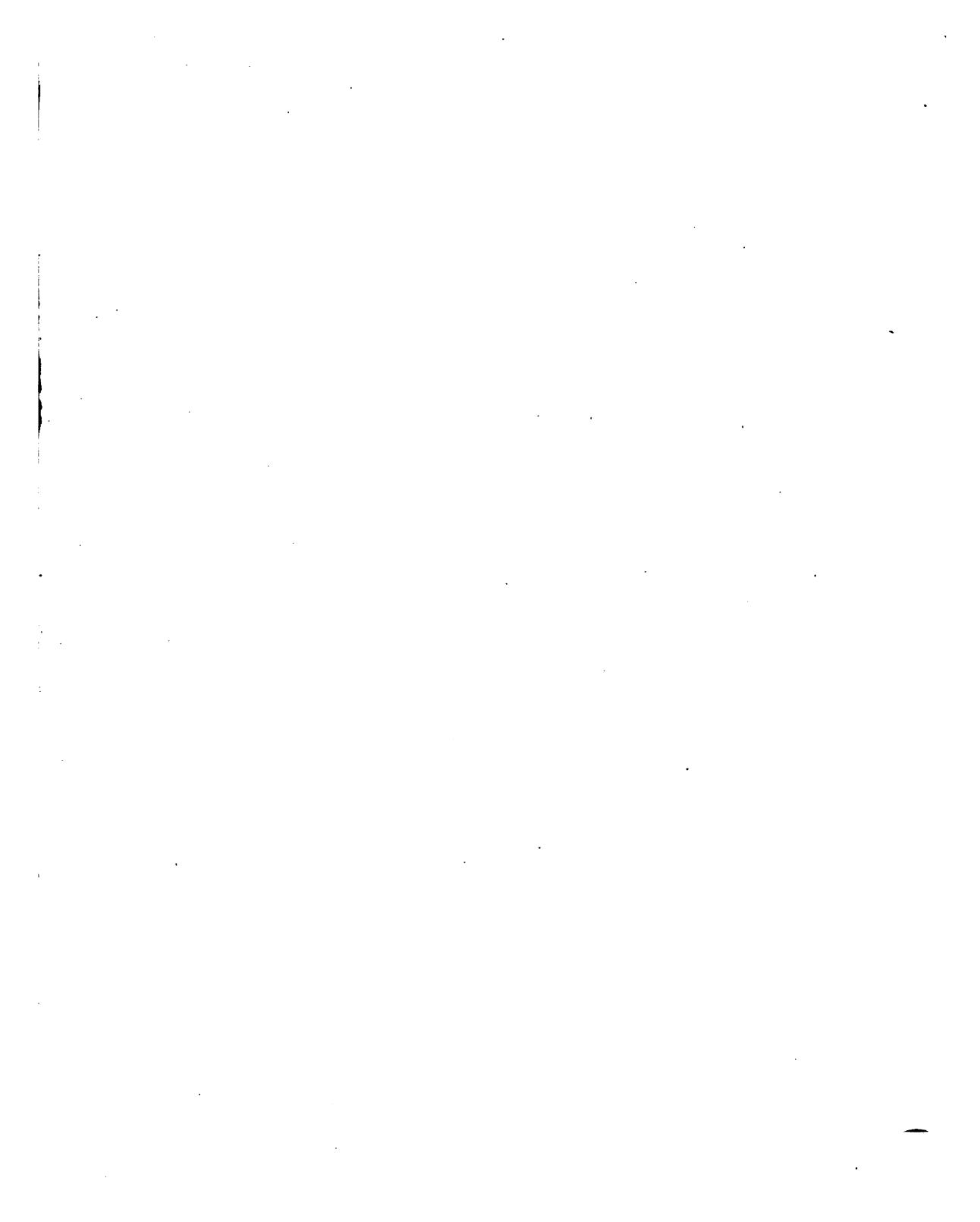
Section in English Act.	Corresponding Sections in Acts of Victoria, Queensland and Western Australia.	PART I.—PRELIMINARY.				PAGE
1		Short title	...	...	...	2
1		<i>Victoria.</i> — <i>Short title, commencement and division</i>	...	...	...	2
2		<i>Victoria.</i> — <i>Repeal, first schedule</i>	...	...	...	3
2		<i>Queensland</i>				3
2	3	<i>Western Australia</i>				3
		<i>Commencement</i>	...	...	...
		Interpretation of terms	...	...	...	3
PART II.						
BILLS OF EXCHANGE.						
<i>Form and Interpretation.</i>						
3	4	Bill of exchange defined	...	...	...	5
4	5	Inland and foreign bills	...	...	...	6
5	6	Effect where different parties to bill are the same person	...	...	...	7
6	7	Address to drawee	...	...	...	7
7	8	Certainty required as to payee	...	...	...	7
8	9	What bills are negotiable	...	...	...	8
9	10	Sum payable	...	...	...	8
10	11	Bill payable on demand	...	...	...	9
11	12	Bill payable at a future time	...	...	...	9
12	13	Omission of date in bills payable after date	...	...	...	9
13	14	Ante-dating and post-dating	...	...	...	10
14	15	Computation of time of payment	...	...	...	10
15	16	Case of need	...	...	...	12
16	17	Optional stipulations by drawer or endorser	...	...	...	12
17	18	Definition and requisites of acceptance	...	...	...	12
18	19	Time for acceptance	...	...	...	13
19	20	General and qualified acceptances	...	...	...	13
20	21	Inchoate instruments	...	...	...	14
21	22	Delivery	...	...	...	15

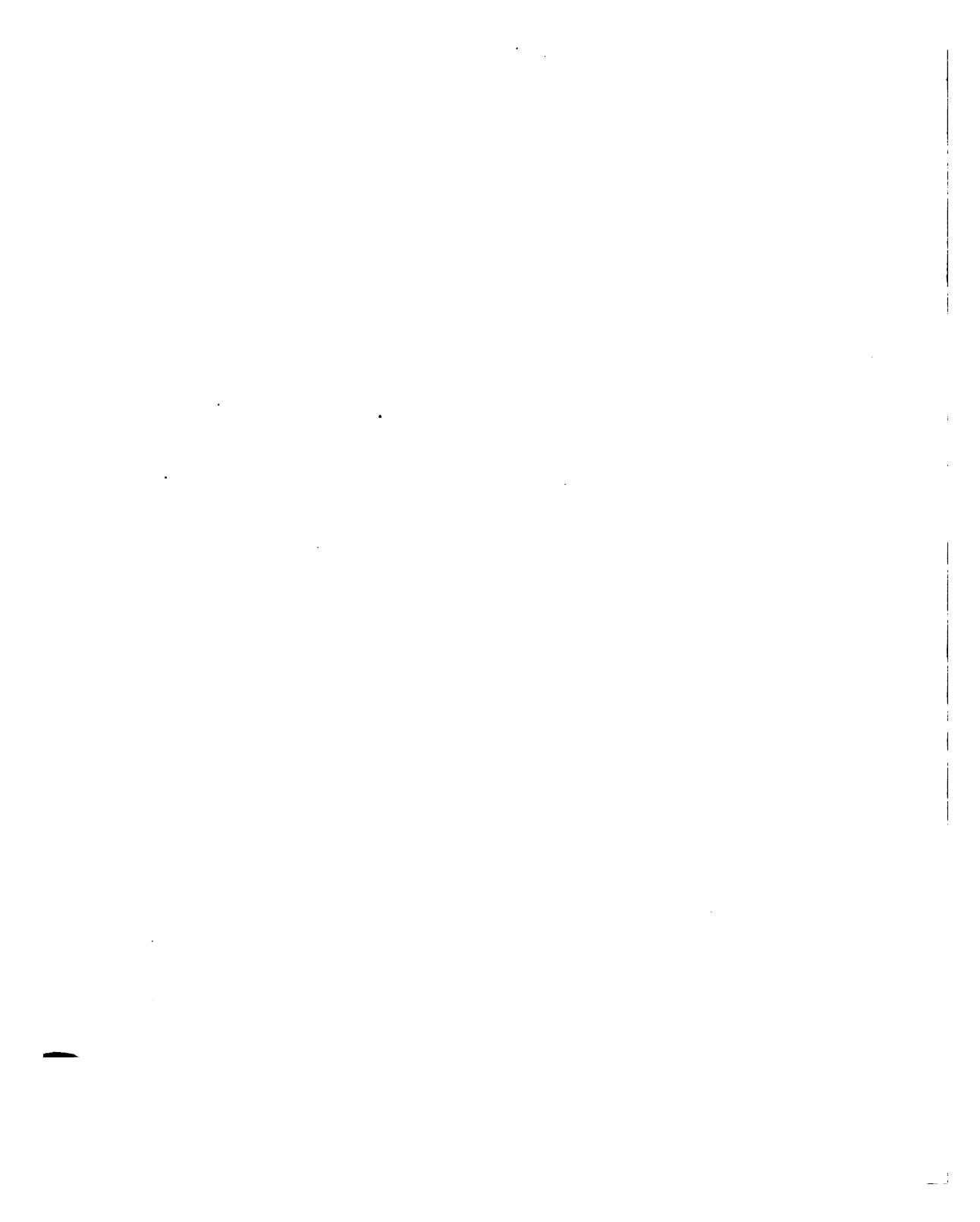
Section in English Act.	Corresponding Sections in Acts of Victoria, Queensland and Western Australia.	CONTENTS.					PAGE
<i>Capacity and Authority of Parties.</i>							
22	23	Capacity of parties	...	...	...	...	16
23	24	Signature essential to liability	...	...	...	...	16
24	25	Forged or unauthorised signature	...	...	...	...	16
25	26	Procuration signatures	...	...	...	...	17
26	27	Person signing as agent or in representative capacity	...	...	...	...	17
<i>The Consideration for a Bill.</i>							
27	28	Value, and holder for value	...	...	...	...	17
28	29	Accommodation bill or party	...	...	...	...	18
29	30	Holder in due course	...	...	...	...	18
30	31	Presumption of value and good faith	...	...	...	...	19
<i>Negotiation of Bills.</i>							
31	32	Negotiation of bill	...	...	...	...	19
32	33	Requisites of a valid indorsement	...	...	...	...	20
33	34	Conditional indorsement	...	...	...	...	21
34	35	Indorsement in blank and special indorsement	...	...	...	...	21
35	36	Restrictive indorsement	...	...	...	...	21
36	37	Negotiation of over-due or dishonoured bill	...	...	...	...	22
37	38	Negotiation of bill to party already liable thereon	...	...	...	...	23
38	39	Rights of the holder	...	...	...	...	23
<i>General Duties of the Holder.</i>							
39	40	When presentment for acceptance is necessary	...	...	...	...	23
40	41	Time for presenting bill payable after sight	...	...	...	...	24
41	42	Rules as to presentment for acceptance, and excuses for non-presentment	...	...	...	...	24
42	43	Non-acceptance	...	...	...	...	26
43	44	Dishonour by non-acceptance and its consequences	...	...	...	...	26
44	45	Duties as to qualified acceptances	...	...	...	...	26
45	46	Rules as to presentment for payment	...	...	...	...	27
46	47	Excuses for delay or non-presentment for payment	...	...	...	...	28
47	48	Dishonour by non-payment	...	...	...	...	29
48	49	Notice of dishonour and effect of non-notice	...	...	...	...	30
49	50	Rules as to notice of dishonour	...	...	...	...	30
50	51	Excuse for non-notice and delay	...	...	...	...	33
51	52	Noting or protest of bill	...	...	...	...	34
52	53	Duties of holder as regards drawee or acceptor	...	...	...	...	36
<i>Liabilities of Parties.</i>							
53	54	Funds in hands of drawee	...	...	...	...	37
54	55	Liability of acceptor	...	...	...	...	37
55	56	Liability of drawer or indorser	...	...	...	...	38
56	57	Stranger signing bill liable as indorser	...	...	...	...	39
57	58	Measure of damages against parties to dishonoured bill	...	...	...	...	39
58	59	Transferor by delivery and transferee	...	...	...	...	40

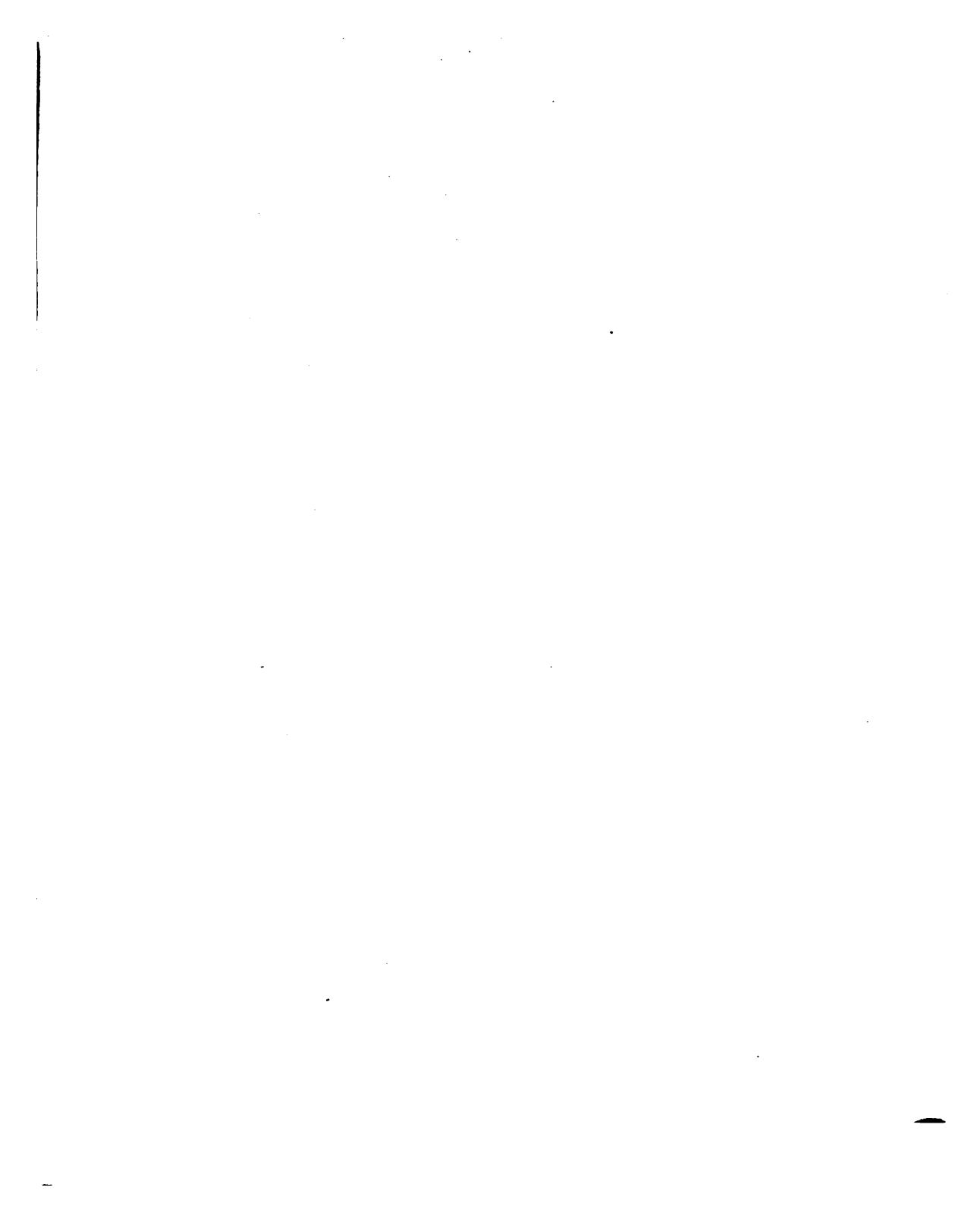
Section in English Act.	Corresponding Sections in Acts of Victoria, Queensland and Western Aus- tralia.	CONTENTS.	PAGE
<i>Discharge of Bill.</i>			
59	60	Payment in due course ...	40
60	61	Banker paying demand draft whereon indorse- ment is forged ...	41
61	62	Acceptor the holder at maturity ...	41
62	63	Express waiver ...	42
63	64	Cancellation ...	42
64	65	Alteration of bill ...	42
<i>Acceptance and Payment for Honour.</i>			
65	66	Acceptance for honour <i>suprà</i> protest ...	43
66	67	Liability of acceptor for honour ...	44
67	68	Presentment to acceptor for honour ...	44
68	69	Payment for honour <i>suprà</i> protest ...	45
<i>Lost Instruments.</i>			
69	70	Holder's right to duplicate of lost bill ...	46
70	71	Action on lost bill ...	46
<i>Bill in a Set.</i>			
71	72	Rules as to sets ...	47
<i>Conflict of Laws.</i>			
72	73	Rules where laws conflict ...	48
PART III.			
<i>Cheques on a Banker.</i>			
73	74	Cheque Defined ...	50
74	75	Presentment of cheque for payment ...	51
75	76	Revocation of banker's authority ...	51
<i>Crossed Cheques.</i>			
76	77	General and special crossings defined ...	51
77	78	Crossing by drawer or after issue ...	52
78	79	Crossing a material part of cheque ...	53
79	80	Duties of banker as to crossed cheques ...	53
80	81	Protection to banker and drawer where cheque is crossed ...	55
81	82	Effect of crossing on holder ...	55
82	83	Protection to collecting banker ...	55
PART IV.			
PROMISSORY NOTES.			
83	84	Promissory note defined ...	56
84	85	Delivery necessary ...	56
85	86	Joint and several notes ...	56
86	87	Note payable on demand ...	57
87	88	Presentment of note for payment ...	57
88	89	Liability of maker ...	57
89	90	Application of Part II. to notes ...	58

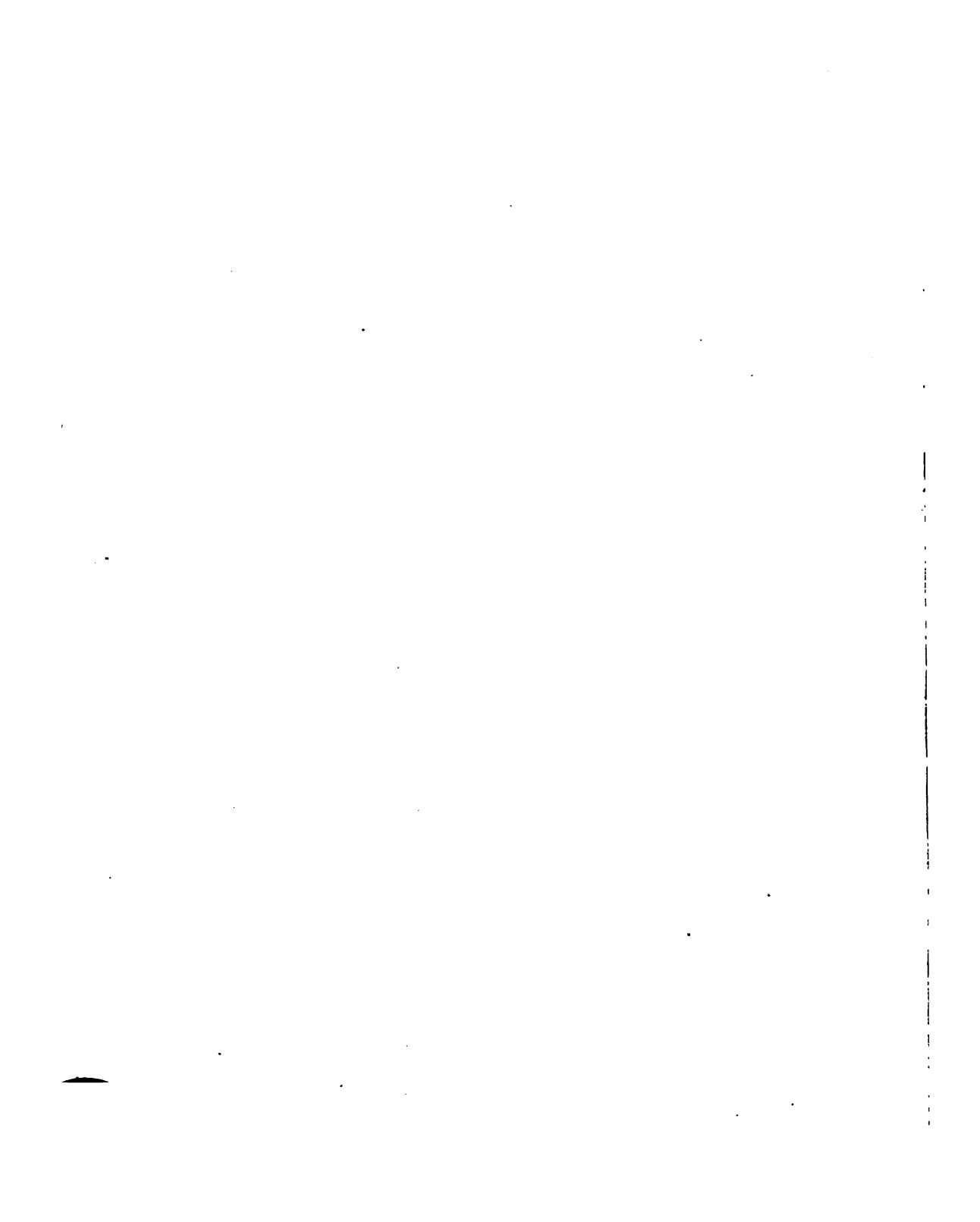
Section in English Act.	Corresponding Sections in Acts of Victoria, Queensland and Western Aus- tralia.	CONTENTS.	PAGE
		<i>Victoria.—Division 4.—Summary Proceedings.</i>	
91		<i>Victoria.—Interpretation</i>	58
92		” <i>Form of action upon bills due and costs</i> ...	58
93		” <i>Judge if he see cause may allow ap- pearance to writ and action to be defended</i>	59
94		” <i>Judge may allow action to be defended after judgment if he see fit</i> ...	59
95		” <i>Bill to be deposited with officer of court, and plaintiff to give security for costs</i> ...	59
96		” <i>Expenses of noting, &c., may be re- covered with the bill</i> ...	59
97		” <i>One writ may be issued against all the parties to a bill</i> ...	59
98		” <i>Practice in actions to apply to this Part</i> ...	59
		 PART V. SUPPLEMENTARY.	
90	V. 99, Q.,W.A. 91.	Good faith	59
91	V. 100, Q.,W.A. 92.	Signature	60
92	V. 101, Q.,W.A. 93.	Computation of time	60
93	V. 102, Q.,W.A. 94.	When noting equivalent to protest ...	61
94	V. 103, Q.,W.A. 95.	Protest when notary not accessible ...	61
95	V. 104, Q.,W.A. 96.	Dividend warrants may be crossed ...	62
95		<i>New Zealand.—Bill of exchange drawn at sight to be deemed the same as bill of ex- change on demand</i> ...	62
96		” <i>Special provision in case of aboriginal natives</i>	62
96	Corresponding Sections in Colonial Acts.	 Repeal	62
96	Q.,W.A. 98, N.Z. 97.	<i>South Australia.—Repeal of 3, 1861, ss. 4, 5 and 100, 1878</i>	63
97		<i>Queensland.—Bills and notes under twenty shillings</i> ...	63
97		<i>Western Australia.—Bills and notes under twenty shillings</i> ...	63
97		<i>Tasmania.—Certain Imperial Acts not in force in this colony</i> ...	63
97	V. 105; S.A. 95; Q.,W.A. 99; T a s., N.Z. 98.	Savings	64

Section in English Act.	Corresponding Sections in Colonial Acts.	CONTENTS.		PAGE
98	—	Saving of summary diligence in Scotland		65
99	N.S.W., 98.	Construction with other Acts, &c.		66
100	Q., W.A., 100.	Parole evidence allowed in certain judicial pro- ceedings in Scotland		66
Section in Act of Victoria.	Corresponding Section in other Colonial Acts.			
106	Tas., 100.	<i>Victoria.—Penalty for passing bank-notes with names of traders or private persons</i>		67
107	Tas., 101.	<i>Victoria.—Definition of bank-note</i>		67
Schedules...		68-76











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